

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

76-1296-97

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

vs.

HAROLD ROSENBERG and JAMES F. HEIMERLE,

Defendants-Appellants.

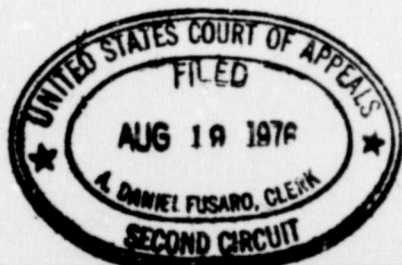
*On Appeal from the United States District Court for the
Southern District of New York.*

**APPENDIX FOR DEFENDANT-APPELLANT
HEIMERLE**

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RELEVANT DOCKET ENTRIES

Indictment

Notice of Motion to Reduce Bail and Memo endorsed

Notice of Appearance by Michael B. Pollack, Esq.

Governments Requests to Charge

Order of Notice to Court that the

above named defendant is a dangerous special offender

Defendant's supplement to his motion

previously submitted by his attorney

Judgment

Defendant's Notice of Appeal

Government's Notice of Appeal

Defendant's Memorandum of Law

Transcript.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA :
-v- : INDICTMENT
JAMES F. HEIMERLE and : 76 Cr.1
HAROLD ROSENBERG, :
Defendants. :
-----x

COUNT ONE

The Grand Jury charges:

On or about January 28, 1976, in the Southern District of New York, JAMES F. HEIMERLE, the defendant unlawfully, wilfully and knowingly did sell, exchange, transfer and deliver certain false, forged, counterfeited and altered obligations and other securities of the United States, to wit, fifty (50) counterfeited one hundred dollar Federal Reserve notes with the intent that the same be passed, published, and used as true and genuine.

(Title 18, United States Code, Section 473).

COUNT TWO

The Grand Jury further charges:

On or about February 2, 1976 in the Southern District of New York, JAMES F. HEIMERLE, the defendant, unlawfully, wilfully and knowingly did sell, exchange, transfer and deliver certain false, forged, counterfeited and altered obligations and other securities of the United States, to wit, fifty (50) counterfeited one hundred dollar Federal Reserve notes with the intent that the same be passed, published, and used as true and genuine.

(Title 18, United States Code, Section 473).

COUNT THREE

The Grand Jury further charges:

On or about February 6, 1976, in the Southern District of New York, JAMES F. HEIMERLE and HAROLD ROSENBERG, the defendants, unlawfully, wilfully and knowingly did sell, exchange, transfer and deliver certain false, forged, counterfeited and altered obligations and other securities of the United States, to wit, three hundred and twenty-six (326) counterfeited one hundred dollar Federal Reserve notes with the intent that the same be passed, published, and used as true and genuine.

(Title 18, United States Code, Sections 473 and 2).

COUNT FOUR

The Grand Jury further charges:

From on or about January 28, 1976, in the Southern District of New York and elsewhere, JAMES F. HEIMERLE and HAROLD ROSENBERG, the defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with other persons to the Grand Jury unknown, to violate Section 473 of Title 18, United States Code.

It was part of said conspiracy that said defendants and their co-conspirators unlawfully, wilfully and knowingly, would sell, exchange, transfer and deliver false, forged, counterfeited and altered obligations and other securities of the United States, to wit, three hundred and twenty-six (326) One Hundred Dollar Federal Reserve notes with the intent that the same be passed, published and used as true and genuine.

Overt Acts

In furtherance of said conspiracy and to effect the object thereof, the defendants and their co-conspirators committed and caused to be committed the following overt acts, among others, in the Southern District of New York:

a. On or about January 28, 1976, the defendant JAMES F. HEIMERLE met a Special Agent of the United States Secret Service, who was operating in an undercover capacity.

3.

b. On or about February 2, 1976, the defendant JAMES F. HEIMERLE met a Special Agent of the United States Secret Service, who was operating in an undercover capacity.

c. On or about February 6, 1976, the defendant HAROLD ROSENBERG delivered a package containing three hundred twenty-six (326) counterfeited one hundred dollar Federal Reserve notes to the defendant JAMES F. HEIMERLE in the presence of a Special Agent of the United States Secret Service, who was operating in an undercover capacity.

(Title 18, United States Code, Section 371).

FOREMAN

THOMAS J. CAHILL
United States Attorney

prerecorded funds.

Q Mr. McDonnell, I show you Government Exhibit No.2. I ask you to examine it and ask you if you can identify it for the Court and jury?

A This is a photostatic copy of the official government funds that I had in my possession that day.

MR. NAFTALIS: Do you wish to see this? I offer it.

MR. LOPEZ: Objection, not binding on defendant Rosenberg.

MR. POLLACK: Objection as to relevance at this time.

THE COURT: Let me see them.

(Handed to Court.)

THE COURT: I will take them subject to connection.

(Government Exhibit 2 for Identification received in Evidence.)

Q Mr. McDonnell, after you arrived at Joyce's Pub who, if anyone, did you see there?

A I met with someone named Julian Mitchell who was acting in the capacity of an informant for the United States Secret Service.

Q What, if anything, did you do with Mr. Mitchell

1a

ards

McDonell - direct

11

at that time?

A I gave Mr. Mitchell \$300 in the prerecorded funds.

Q That is \$300 out of those funds shown in Government's Exhibit 2 in Evidence?

A Yes.

Q What, if anything, did you do after you gave him the \$300 in prerecorded funds?

A A short time later I observed the defendant, Mr. Heimerle, come to the door of the bar and motion to Julian Mitchell to come outside.

Q What, if anything, happened after that?

A A few minutes later Mr. Mitchell came in, spoke with me, and both of us went outside and entered a 1970 goldish-brown Pontiac.

Q Was there anyone else in the Pontiac?

A Mr. Heimerle was in the car.

Q Mr. McDonell, you refer to Mr. Heimerle. Do you see him present in the courtroom?

A Yes, seated there at the table in the brown sports jacket second to the right of the defense table.

THE COURT: Identification conceded?

MR. POLLACK: Yes, your Honor.

Q What, if anything, did you do when you entered

1 ards

Heavey - direct

155

2 Mr. Heimerle?

3 A Yes, sir.

4 Q I ask you to examine Government Exhibit 1 for
5 Identification. I ask you if you can identify it?

6 A It is a genuine \$100 Federal Reserve Note,
7 dated 2/6/76, with my initial, JEH.

8 Q Do you know how those initials and the date
9 got on there?

10 A Yes, sir. I placed them on there.

11 Q When?

12 A On February 6, 1976.

13 Q Where did you obtain this \$100 bill from?

14 A From Mr. Heimerle.

15 Q From his person?

16 A Yes, sir.

17 Q I ask you to examine that \$100 bill, Government
18 Exhibit 1 for Identification, and also compare it to Govern-
19 ment Exhibit No.2 in Evidence.

20 Mr. Heavey, what does your examination disclose?

21 A This \$100 bill was taken off Mr. Heimerle and
22 is part of the marked money which I Xeroxed and recorded
23 on January 27, 1976.

24 Q Do you know what that marked money was used for?

25 A Yes, sir, to purchase counterfeit notes.

Q By whom and what date?

A Special Agent Frank McDonell on January 28, 1976.

MR. NAFTALIS: Your Honor, I move Government Exhibit 1 for Identification in to evidence.

THE COURT: Any objection?

MR. POLLACK: Objection for the record, your Honor.

THE COURT: Overruled.

MR. LOPEZ: Objection as to Rosenberg, the same ground.

THE COURT: It is limited solely to the defendant Heimerle at this point.

MR. NAFTALIS: If there is no objection from the defense, the government would like to mark and use in substitution a Xerox copy of the genuine \$100 bill.

MR. POLLACK: No objection.

(Government Exhibit 1 received in Evidence.)

MR. NAFTALIS: This is 1A, your Honor.

(Government Exhibit 1A received in Evidence.)

Q Agent Heavey, you have indicated that you have been a special agent for 11 years and worked in the counterfeiting area for 11 years?

A That is correct.

Q Have you received during the course of your time with the Secret Service any training?

1 A Right after December 25 or 26, whatever it might
2 have been.

3 Q After that, sir, sometime in January did you
4 have some --

5 MR. NAFTALIS: Objection as to form, your Honor.

6 THE COURT: Overruled.

7 A I was in constant touch with him because he
8 kept leaving a message and I don't know what date we are
9 referring to.

10 THE COURT: Don't look at me.

11 Q Where was he leaving messages for you?

12 A At first he called my friend's niece, Rosie.

13 THE COURT: That took care of the first contact.

14 A After, he got in touch with me at my parents'
15 house.

16 Q Did there ever come a time when you had a dis-
17 cussion with Mr. Mossep about regaining monies he owed you?

18 A Yes.

19 Q When?

20 A At the Edison Hotel.

21 Q Did he ever repay you any monies he owed you?

22 A Yes.

23 Q When?

24 A A few days after the first meeting I had with
25

him in the Edison.

Q How much did he pay?

MR. NAFTALIS: I object to this.

THE COURT: Overruled.

A He gave me \$200.

Q Mr. Heimerel, you heard the agents over the last two days, Agent McDonell met you January 28, 1976 at Joyce's Pub, is that correct?

A Yes.

Q Will you tell the ladies and gentlemen of the jury how it came that you were at Joyce's Pub on that day?

A I had a meeting with him there.

Q Who?

A Julian.

Q When did you talk to Julian?

A I left a message for me and I called him back at the Pickwick Arms.

Q Please keep your voice up.

A Called him back at the Pickwick Arms and told me to meet him at Joyce's Pub.

Q Did he tell you why he wanted you to meet him?

A In reference to the money.

Q What money?

A The money that he owed me. He owed me altogether

I believe about \$1,500.

Q What did he tell you?

A He said to meet him, he will give me a couple hundred more.

Q Now, sir, did you arrive on the 28th at Joyce's Pub?

A Yes.

Q Did you go into the pub?

A Yes.

Q Did you see Mr. Mitchell?

A Yes.

Q What happened next?

A He asked me to come outside.

Q And?

A We spoke about money. He said that at this time he would give me \$300. Then he went back into the bar. He came out with the \$300.

Q Did he come with anybody else?

A He came out, he got in the car, the other fellow tapped on the window. He said, "Let him in."

Q What was his name?

A Frank.

Q Was this the gentleman you saw yesterday, Mr. McDonell?

1 A Yes.

2 Q What happened in the car, sir?

3 A Julian handed McDonnell an envelope, Frank. I
4 don't know if that is his right last name. He handed him
5 an envelope.

6 Q Then what happened?

7 A Frank gave him some money.

8 Q What happened after that?

9 A Then he gave me the money.

10 Q Who gave you the money?

11 A He gave me the \$300 from the money that Frank
12 gave him.

13 Q What form of currency?

14 A I believe there was at that point, I think,
15 \$100 bills.

16 Q Three \$100 bills?

17 A Yes.

18 Q Did you drive around the block?

19 A No.

20 Q Was that the end of your conversation on that
21 day with Mr. Mitchell and Frank?

22 A Yes.

23 Q Now, you heard agents testify that he met you
24 at Joyce's Pub on February 2, is that correct?
25

in a vehicle constantly traveling around the block and the general area to surveil the meeting in the car.

What specifically did Chodash testify to? In one of his passes he slowed up to stop for a red light. He looked over into the parked Heimerle car, right into the driver's side and there behind the driver's wheel was Heimerle counting the money, money behind the wheel of the car.

What else did we hear? Special Agent Zoma was on surveillance in a vehicle. He testified as to how he followed the car around the block and he watched Heimerle, Mitchell and McDonnell within this surveillance vehicle.

What other evidence did the government introduce as to this charge? As I already indicated we offered for your consideration \$5,000 counterfeit obtained from Mr. Heimerle at that time. The United States also offered Government Exhibits number 2, the Xerox of the \$600 of buy money pre-recorded official government funds, that were used to make the purchase of this \$5,000 in counterfeit money.

This money was given to Special Agent McDonnell by Special Agent Heavey, supervisor, who testified here yesterday. This money ultimately was paid Heimerle in order to obtain this \$5,000 in counterfeit.

What other evidence did the government offer you

1 arog 7

2 with respect to the first charge? The government also
3 offers you \$100 in genuine currency, exhibit 1. What is the
4 testimony concerning Government Exhibit 1? Government
5 Exhibit 1 was obtained by Special Agent Heavey from the
6 person of James Heimerle at the time of his arrest on
7 February 6.

8 What did the examination of this bill disclose?
9 It was one of the pre-recorded bills from the original
10 \$600, pre-recorded federal funds to effect the purchase of
11 this first \$5000 in counterfeit.

12 Ladies and gentlemen, it is here, there is an
13 opportunity if you wish to compare the serial numbers
14 between the Xerox bills and the \$100 bill removed from the
15 person of James Heimerle several days later at the time of
16 his arrest. That is the evidence in respect to count 1
17 solely against James Heimerle and it involves the delivery
18 and sale of this \$5,000 in counterfeit.

19 We get to count 2. This was a count which also
20 deals with the sale on February 2, 1976, once again solely
21 against the defendant James Heimerle. What evidence did the
22 government offer? Once again Special Agent McDonnell who
23 came to meet with Heimerle in Joyce's Pub. McDonnell testified
24 he waited in the Pub, Heimerle came in, called him out of
25 the Pub. He entered the vehicle, Heimerle's vehicle and the

1 ards 1
2 United States of America
3
4 James F. Heimerle, et al.

-vs-

76 Cr. 146

M. Metzner, 3
D.J.

New York, New York
May 5, 1976--10:00 a.m.

B1 8 (Trial resumed.)

9 (The following took place in the robing room.)

10 THE COURT: I have the requests to charge.

11 MR. POLLACK: Yesterday afternoon as my client,
12 James Heimerle, was being taken back to the prison, he was
13 in the company of John Grillo, an individual who had been
14 called here pursuant to subpoena issued by myself to testify
15 in Mr. Heimerle's behalf.

16 In the hallway the jurors were waiting to go
17 down in the elevators. There were two marshals who were
18 discussing between themselves that one, could they go back
19 together, and it was agreed they could not, they should go
20 back separately. At this point my client was taken down
21 a few flights of steps and put into the elevator.

22 Subsequent to this we were informed by the
23 marshals who had Mr. Grillo back here that he had escaped.
24 However, my client advises me that the jurors were there
2 present, saw him talking to this man and I don't know whether

11a

1 ards 2

2 the man was heard but the name was mentioned in the course
3 of the conversation.

4 THE COURT: But the jurors wouldn't have been
5 here.

6 MR. POLLACK: They were outside by the elevator,
7 out in the hallway as they walked out of the courtroom to
8 the left, there are some tables.

9 THE COURT: He didn't escape until after the
10 jurors were out of the courthouse.

11 MR. POLLACK: I don't know the exact time.

12 MR. LOPEZ: It was after because as soon as the
13 marshals came out in the courtroom I believe it was announced
14 that the prisoner had in fact escaped, apparently the
15 elevators were not functioning or ceased for the moment and
16 the jurors were still out there to the extent that I remember
17 Mr. Naftalis and ourselves waiting for the jurors to get in
18 the elevators and to take other elevators, if I remember
19 that correctly.

20 MR. NAFTALIS: Also there was some confusion.
21 I believe Judge Stewart was across the hall yesterday hold-
22 ing court and his jury was released after ours was and they
23 were waiting in the hall.

24 THE COURT: That was the reason I make the
25 statement that I regarded the jurors as gone, we ended the

1 ards 3

2 case yesterday and I dismissed the jury. We then had a
3 discussion in this courtroom before we left. We didn't
4 leave until at least five minutes after our jury left.
5 I came in and took my robe off and put on a jacket and went
6 out and he was still here standing in the doorway, to the
7 public corridor.

8 MR. POLLACK: Right.

9 THE COURT: Our jurors might have been gone
10 seven or eight minutes. How could they possibly have known?

11 MR. LOPEZ: As far as Rosenberg is concerned,
12 we would object for whatever that is worth, to raising this
13 issue because we feel it would be creating a mountain out
14 of a molehill and I feel that there has been some comment
15 with regard to this in The New York Times and the jury may
16 not even associate the man and we will then in effect be
17 telling them.

18 THE COURT: I haven't even seen The New York
19 Times.

20 MR. NAFTALIS: I have seen both stories. I
21 brought a Xerox of the Daily News article. The Times article
22 mentioned that there was a case in our court. The Daily
23 News article mentioned the name of the case and your Honor's
24 name but did not indicate which side called Mr. Grillo.

25 THE COURT: Bring it in.

1 ards 4

2 MR. NAFTALIS: This was on page 43 of the Daily
3 News.

4 THE COURT: This News story says that he was
5 being held at the Metropolitan Correction Center in order
6 to testify. He wasn't in the Correction Center for the
7 purpose of testifying.

8 MR. NAFTALIS: He was there for a violation as
9 well as sentencing.

10 THE COURT: The Times story has no relationship.
11 You can't identify from the Times story the name of the case
12 or that the escaped man was identified with this case so I
13 don't think we need the Times problem.

14 How about the Daily News?

15 MR. NAFTALIS: I might also indicate I saw on
16 television, on NBC last night, the 11:00 o'clock news, and
17 in that coverage they did not mention the case nor the name
18 of the Court, the judge. I believe the deputy marshal in-
19 dicated the courtroom number but didn't indicate what the
20 man was here for, just indicated he had taken off without
21 referring to anything with respect to the case.

22 THE COURT: Do you have another copy of the News?
23 I want to make this a copy of record.

24 MR. NAFTALIS: Yes, I have an additional copy.

25 THE COURT: Make this part of the record and

1 ards 5

2 Mr. Pollack, do you have any motion to make?

3 MR. POLLACK: No, Judge. I agree with Mr. Lopez,
4 I think by drawing attention to it it will only intensify
5 the problem.

6 THE COURT: All right. Mark this as a court
7 exhibit.

xx 8 (Court Exhibit 1 marked for Identification.)

9 THE COURT: There is no need to mark The New
10 York Times article because you can't tie-up the story with
11 this trial.

12 MR. POLLACK: That is the only one I have seen,
13 Judge.

14 THE COURT: Now, let's get down to the rulings
15 on the requests to charge.

16 The government Request No.1 is denied except
17 as charged.

18 No.2, denied except as charged.

19 No.3, denied except as charged.

20 No.4, denied except as charged.

21 No.5, denied except as charged, but there is one
22 on a prior similar act?

23 MR. NAFTALIS: That is correct, your Honor.

24 THE COURT: But you use plurals here.

25 Request No.6 is denied because there is no

1 ards 6

2 issue on that. I am charging them it is their obligation,
3 I am not leaving it up to them to decide.

4 7 is denied except as charged.

5 No.8 is denied.

6 No.9 is denied except as charged.

7 No.10 is denied except as charged.

8 No.11 is denied except as charged.

9 No.12 is denied except as charged.

10 No.13 is denied except as charged.

11 No.14 is denied except as charged.

12 No.15 is denied except as charged.

13 No.16 is denied except as charged but I don't
14 charge that second sentence of the second paragraph.

15 MR. NAFTALIS: I am referring only to Count 3
16 in this respect.

17 THE COURT: Not the way it is written. I am
18 denying the Pinkerton Charge.

19 No.17 is denied except as charged.

20 No.18 is denied. That is the Pinkerton Charge.

21 No.19 is denied.

22 No.20 is denied. There is no entrapment in this
23 case.

24 21 is denied except as charged.

25 22 is denied except as charged.

1 ards 7

2 No.23, uncalled witnesses, I don't know who you
3 are referring to.

4 MR. NAFTALIS: Julian Mitchell could have been
5 called by either side.

6 THE COURT: That depends on the summation whether
7 I give it or not.

8 Request No.24 is denied.

9 No.25 is denied.

10 26 is denied, 27 is denied except as charge.
11 I do not give your last sentence regarding the intense
12 interest of a defendant.

13 28 is denied except as charged.

14 29 is denied, and that is it.

B2 15 MR. POLLACK: Your Honor, before I make a final
16 commitment on the newspaper article, I want to show my
17 client the article, he has not seen it. I want to make
18 sure he consents to my judgment.

19 (Pause)

20 MR. LOPEZ: I spoke with the defendant Rosenberg
21 and advised him of the posture I had taken before the Court
22 on the issue and he agrees to go along with me and that we
23 do not raise the issue before the jury and draw attention
24 to it.

25 MR. POLLACK: Heimerle would not agree. I tried

1 ards 8

2 to convince him that he is wrong.

3 THE COURT: I will bring the jury in and ask
4 them if any of them read any of the stories in the newspapers
5 or heard any broadcast on the radio or television last night
6 concerning the escape of a prisoner from this courthouse.

7 Those who raise their hand I think we will bring
8 them in here one-by-one so that there will be no contamina-
9 tion.

10 MR. POLLACK: I concur.

11 THE COURT: One-by-one and interrogate them
12 and assure them of the facts and ask them whether this would
13 affect their ability.

14 MR. POLLACK: Yes, your Honor, fair enough.

15 THE COURT: Bring the jury in.

16 (In open court.)

17 (Jury present.)

18 THE COURT: Before we complete the trial, I
19 would like to know if any juror has read in the newspapers
20 today or heard either on radio or television broadcasts last
21 night about the escape of a prisoner from the court? If
22 you saw it will you raise your hand?

23 (Showing of hands.)

24 THE COURT: Approximately everybody did. I
25 would suggest, counsel, that I change the procedure and do

1 pgds 9

2 it in open court.

3 MR. NAFTALIS: The government has no objection.

4 MR. POLLACK: Agreed, your Honor.

5 MR. LOPEZ: No objection.

6 THE COURT: Since you read it and some of the
7 articles identify the case, which is this case and some of
8 them didn't, I am going to tell you the facts as they occur-
9 red and then ask whether this would affect your judgment
10 at all in determining the issues before us.

11 The escape had nothing to do with the issues
12 in this case. It involved a man who was incarcerated in
13 the Federal House of Correction behind the courthouse being
14 brought here to testify as a witness.

15 When he arrived here it was decided he would not
16 be called as a witness. Consequently he remained outside,
17 he never testified as you know, but while he was outside he
18 escaped.

19 This has absolutely nothing to do with the issues
20 in this case and obviously should not in any affect your
21 determination of the issues that are going to be submitted
22 to you in this case. There is no relationship between the
23 witness and the government or either of the defendants.

24 With this explanation, does that satisfy counsel?

25 MR. NAFTALIS: Satisfactory to the government.

1 pgds 10

2 MR. POLLACK: Satisfactory as to the facts as
3 it happened, your Honor.

4 THE COURT: I ask you whether you thing that
5 despite what I told you, your judgment would still be affected
6 by the story?

7 JUROR NO.1: It would not affect me.

8 JUROR NO.2: No.

9 JUROR NO.3: It would not affect me.

10 JUROR NO.4: No.

11 JUROR NO.5: No.

12 JUROR NO.6: No.

13 JUROR NO.7: No.

14 JUROR NO.8: No, sir.

15 JUROR NO.9: No.

16 JUROR NO.10: No, sir.

17 JUROR NO.11: No.

18 JUROR NO.12: No.

19 ALTERNATE JUROR NO.1: No.

20 ALTERNATE JUROR NO.2: No.

21 THE COURT: I suggest you sum up.

22

23

24

25

CHARGE OF THE COURT

THE COURT: Ladies and gentlemen of the jury, you have now reached the point in this trial where you are about to enter upon your final function as jurors which is, of course, one of the sacred duties of citizenship.

You have given careful attention to the evidence during the course of the trial and I am certain that you will conduct your deliberations in the same fine spirit that you have so far displayed and with impartiality and fairness reach a just verdict in this case.

In our court system the function of the judge and the jury are clearly defined. It is my duty to instruct you as to what the law is and it is your duty to accept the law as I state it to you. Just as I am the exclusive judge of the law, so you are the exclusive judges of the facts. You alone determine the credibility of the witnesses and the weight, effect and value which should be given to their testimony. It is up to you to determine from the evidence you have heard what the facts are in this case and from those facts decide whether a defendant has violated the law.

This is a criminal prosecution in which the government is one party and the defendants are the others. The fact that the government is a party entitles it to no greater and no lesser consideration than any other party.

It is entitled to the same consideration as given to the defendants, no more and no less.

This case must be decided within the scope of the charges against each defendant as contained in the indictment but before discussing the law applicable to the charges of the indictment, let's consider some general principles which apply in every criminal case.

An indictment itself is not evidence. It merely describes the charges made against the defendant and may not be considered by you as evidence of the guilt of a defendant. Nor can the fact that a grand jury found an indictment in any way detract from the presumption of innocence with which the law surrounds a defendant, unless and until his guilt is proven beyond a reasonable doubt.

Each of the four counts which you will consider alleges the commission of a separate and distinct offense. It will be necessary for you to reach a verdict of guilty or not guilty as to each of the defendants separately on each of the counts in the indictment in which he is named.

You must consider and weigh the evidence separately as to each defendant in each count. The fact that you may find one of the defendants guilty or not guilty of one of the offenses charges should not control or influence your verdict with respect to any other offense with which a

defendant is charged, or to a charge against the other defendant. Each defendant denied the charges in the indictment by his plea of not guilty and he put in issue every material fact alleged in the accusations brought against him. Accordingly, the government, having made the charge, has the burden of proving beyond a reasonable doubt each material element of each count of the indictment.

This rule applies to each defendant individually as to each of the charges in the indictment in which he is named. This burden never shifts, it remains with the government during the entire trial and during your deliberations as jurors.

A defendant does not have to prove his innocence, he is presumed to be innocent and this presumption is overcome only when you reach a conclusion from the evidence that his guilt has been established beyond a reasonable doubt. What is a reasonable doubt? There is nothing mysterious about the term. It means as the words themselves indicate, a doubt based upon reason and common sense which arises after a consideration of all the evidence. A reasonable doubt is a doubt which would cause reasonable persons to hesitate to act in matters of importance to themselves.

It is not a vague, speculative, imaginary something and a person may not be convicted on mere suspicion

or conjecture. On the other hand, a reasonable doubt does not exist merely because a juror does not wish to perform an unpleasant duty.

A reasonable doubt may arise not only from the evidence produced but also from a lack of evidence. A defendant may also rely upon evidence brought out on cross-examination of any of the witnesses who testified on behalf of the government. He may raise a reasonable doubt in your mind as to the existence of one or more of the essential elements of a crime without affirmatively presenting his version of all or any of the facts.

This is so because the law does not impose upon a defendant a duty to produce any evidence. The law does not compel a defendant to take the witness stand and testify, and no presumption of guilt may be raised and no finding of any kind may be drawn from the failure of a defendant to testify.

Now, it is not necessary for the government to prove the guilt of a defendant beyond any possible doubt. Proof is usually not a mathematical or absolute certainty. In the nature of things it cannot be. But to sustain a conviction there must be such proof as satisfies your reason as intelligent people beyond any reasonable doubt that a defendant is guilty as charged.

If you do not have a reasonable doubt of a defendant's guilt as to a material element of a charge, then you should return a verdict of guilty on that count.

If, on the other hand, you do have a reasonable doubt as to a defendant's guilt as to any of the material elements of the crime charged, then you must return a verdict of not guilty as to that defendant on that count.

This trial has been a short one. You have heard the summations of counsel in which they pointed out the various portions of the proof on which they say you should rely to render a verdict in favor of their clients. I see no reason to further detail the contentions of the parties or to specify proof to substantiate those contentions. You are about to consider four counts, a conspiracy count and three substantive counts.

The substantive counts and the conspiracy count are governed by quite different legal principles and generally a substantive count charges a violation of law which condemns the specific count as illegal. For example, selling or delivering counterfeit United States currency. On the other hand, in a conspiracy count the offense charged is an agreement or an understanding of two or more persons to commit a violation of a particular substantive law.

Let us turn to the three substantive counts in-

volved in this indictment. They are Counts 1, 2 and 3.

I should first caution you that the defendant Heimerle alone is charged in Counts 1 and 2. Both Heimerle and Rosenberg are charged in Count 3.

Count 1 charges Heimerle with selling 50 counterfeit \$100 bills on January 28, 1976. Count 2 charges Heimerle with selling 50 \$100 bills on February 2nd, 1976.

As to Count 3, both Heimerle and Rosenberg are charged with the transfer of 326 counterfeit \$100 bills in the early morning hours of February 6, 1976.

As to all three counts, however, the elements of the crime charge remain the same. To find a defendant guilty on one of these substantive counts, you must find as to that count the following three elements beyond a reasonable doubt:

First, that on or about the date charged in the count, a defendant sold, transferred or delivered counterfeit \$100 United States Federal Reserve Notes.

Second, that at the time of the transfer the defendant knew that the notes were counterfeit.

Third, that in doing so, the defendant acted with the intention that the counterfeit bills be passed on and used as true and genuine.

As to the first element, the transfer or delivery,

that means to place property in the hands of another. The word sale is used in the normal sense, to place it in the hands of another in exchange for money. But there is no requirement here that the defendant actually received compensation for the property. It is sufficient for the government to prove under this element that the counterfeit bills changed hands.

I should also point out that there is no dispute that the bills here in question, Exhibits 4, 6 and 8, are indeed counterfeit bills.

The second element to be proven beyond a reasonable doubt is that a defendant knew that the \$100 bills were counterfeit. Such knowledge may not be inferred from the mere fact that the defendant possessed or transferred counterfeited bills. You must find knowledge independent of a defendant's possession or transfer of the notes and such knowledge may be inferred from the totality of his actions and statements.

The final element to be proved beyond a reasonable doubt is that a defendant acted with the intent that the bills be passed or used as true or genuine. Under this element the government must prove that the defendant acted knowingly and willfully and that he transferred the notes with the purpose that they be eventually used as genuine

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2 notes.

3 You may find that a defendant acted knowingly
4 and willfully if he acted voluntarily and purposely and with
5 specific intent to do something which the law forbids.
6 That is to say, that he must have acted with an evil motive
7 or bad purpose to disobey or disregard the law and not be-
8 cause of negligence, mistake or any other innocent reason.

9 It is obviously impossible to ascertain or prove
10 directly what a person knew or intended. You cannot look
11 into a person's mind and see what his intentions were or
12 what he knew. But careful and intelligent consideration of
13 the facts and circumstances shown by the evidence in any
14 given case as to a person's acts, statements, enable your-
15 selves to infer with a reasonable degree of certainty and
16 accuracy what his intentions were in doing or not doing
17 certain things and the state of his knowledge.

18 Evidence has been presented that the defendant
19 Heimerle had previously been convicted in 1973 of a crime
20 involving counterfeit money. You may consider this fact
21 in determining whether Heimerle acted with guilty knowledge
22 or intent.

23 You may not consider it as evidence of Heimerle's
24 bad character or propensity to commit the crime charged.

25 As to the third element, the government need

not show that the notes were actually ever passed or used as genuine notes. As I have said, these elements apply both to the defendant Heimerle on Counts 1 through 3 and the defendant Rosenberg on Count 3.

However, there is an alternative theory upon which you may find the defendant Rosenberg guilty as to Count 3. His guilt may be established on this count without proof that he himself actually did every act constituting the offense.

This is so because anyone who knowingly aids or abets or induces the commission of a crime against the United States is punishable as a principal.

In order for a defendant to aid or abet another to commit a crime, it is necessary that he willfully associate himself in some way with the criminal venture, knowing the essential elements of the offense as I have outlined them to you; that he willfully participated in it as something he wished to bring about, that he willfully seeks by some action of his to make it succeed.

Mere presence and guilty knowledge on the part of a defendant that a crime has been committed is not sufficient unless you are also convinced beyond a reasonable doubt that the defendant was doing something to forward the crime, that he was a participant rather than a mere knowing

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spectator.

Count 4 of the indictment is the conspiracy count.

It charges that from on or about January 28, 1976 up to and including February 6, 1976, James Heimerle and Harold Rosenberg unlawfully, willfully and knowingly conspired to violate Section 473 of Title 18, United States Code, which involved the transfer of counterfeit obligations of the United States as I have just explained to you.

What is a conspiracy? It is a combination or an agreement of two or more persons by concerted action to accomplish a criminal or unlawful purpose and one or more of the persons who are members of the conspiracy does any act to effect or further the object of the conspiracy.

It is a partnership in criminal purposes in which a member becomes the agent of every other member and is a crime itself. To prove conspiracy here the evidence must show beyond a reasonable doubt the existence of each one of the following elements:

First, that the conspiracy described was formed and existed at or about the time alleged.

Second, it was part of the conspiracy that the defendants unlawfully, willfully and knowingly would sell, transfer or deliver false, counterfeited obligations of the United States, in particular 326 \$100 Federal Reserve

Notes, with the intent that the same be passed and used as genuine.

Third, that the defendants knowingly and willfully became a member of the conspiracy.

Four, that one of the conspirators thereafter knowingly committed at least one of the overt acts charged in the indictment at or about the time and place alleged.

Fifth, that such overt act was committed in furtherance of some object or purpose of the conspiracy as charged.

As to the formation of a conspiracy, it is not necessary that there be proof that the participants met together and entered into a written or formal agreement; or that they deliberately stated between themselves what their object or purpose was to be; or the details of the plan or the means by which their purpose was to be achieved. Indeed, it would be extraordinary for members of a conspiracy to set forth all the actions and details of their arrangement in a formal and written agreement. When persons, in fact, embark together upon a criminal conspiracy much is unexpressed and is left to understanding.

Generally, such a criminal conspiracy is a matter of inference deduced from the acts and statements of the alleged conspirators.

What the evidence must show in order to establish that a conspiracy existed is that the members in some way or another positively or tacitly came to a mutual understanding to violate the law. In this case it is claimed that the purpose of the conspiracy was to sell counterfeit \$100 bills with the intent that they be passed as genuine by somebody else.

I have already discussed with you the definition of that crime. In determining whether or not there was such an unlawful agreement, you must judge the acts and conduct of each of the alleged conspirators as a whole and the reasonable inferences to be drawn from such evidence.

If you satisfy yourself beyond a reasonable doubt that the conspiracy as alleged in the indictment existed, then you must determine as to each defendant whether he knowingly and willfully was an active participant in the unlawful plan with the intention of furthering its objectives.

Mere knowledge of an illegal act on the part of some other defendant or alleged co-conspirator is not sufficient. Merely acting in a way which incidentally furthers the purpose of a conspiracy without knowledge that a conspiracy exists does not make a person a member of the conspiracy.

The definitions I have just given you of know-

ingly and willfully and specific intent under the other counts of the indictment apply equally as well to this count.

If a defendant with knowledge of the specific object and purpose of a plan intentionally encourages, advises or assist the scheme for the purpose of furthering it, he thereby becomes a knowing and willful participant. He thereby becomes a conspirator.

The guilt of a conspirator is not governed by the extent of his participation. It is not required that each of the conspirators participate in or have knowledge of all of its operations. He may join it at any point in its progress and be held responsible for all that may or has been done.

In determining whether or not a particular defendant was a member of a conspiracy, you may consider evidence of his own acts, statements and conduct, as well as the evidence of the acts, statements and conduct of other alleged co-conspirators and the reasonable inferences to be drawn from such evidence.

You will recall that throughout the trial certain evidence was admitted either subject to connection or only against the defendant

testimony which were admitted subject to connection.

I have also admitted against the defendant Rosenberg without limitation all portions of the testimony relating to the sale of the 326 counterfeit \$100 bills.

However, all testimony relating to the alleged sales on January 28 and February 2nd is admitted only against the defendant Heimerle and may not be considered by you in any way in determining the guilt or innocence of the defendant Rosenberg on Counts 3 or 4.

The indictment alleges that the conspiracy commenced on or about January 28, 1976 and continued to February 6, 1976. The government is not required to prove that the alleged conspiracy existed over the whole course of time set forth in the indictment. It is sufficient if you find that at any time within that period all of the elements of the alleged conspiracy have been proven to your satisfaction beyond a reasonable doubt.

The fact that the government may not have proved a conspiracy was carried on as early or as long as the indictment alleges is not of any importance so far as the elements of the crime are concerned.

The next element that must be proven on this issue of conspiracy is that requirement of an overt act. You may not find a defendant guilty of a conspiracy unless

you are convinced beyond a reasonable doubt that one of the conspirators knowingly committed one of the overt acts charged in the indictment.

The government need not prove the commission of all of the overt acts charged in the indictment. By the term overt act is meant any act knowingly done by any one of the conspirators in an effort to effect or accomplish some object or purpose of the conspiracy.

The overt act may not be criminal in nature if considered separately and apart from the conspiracy. It may be as innocent as the act of a man walking across the street or using a telephone. The overt acts referred to in this indictment are:

A, on or about January 28, 1976, the defendant, James Heimerle, met a special agent of the United States Secret Service who was operating as an undercover agent.

B, on or about February 2nd, 1976, the defendant, James Heimerle, met a Secret Service agent of the United States Secret Service who was operating in an undercover capacity.

C, that on or about February 6, 1976, the defendant Rosenberg delivered a package containing 326 counterfeited \$100 Federal Reserve Notes to the defendant Heimerle in the presence of a special agent of the United

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2 States Secret Service by the name of McDonell operating in
3 an undercover capacity.

4 The fact that a defendant is not named in an
5 overt act is of no importance because once you find that a
6 conspiracy existed and that a defendant on trial was a
7 member of the conspiracy, then he is bound by the acts done
8 and the statements made by any other member in furtherance
9 of that conspiracy, even in the absence of such defendant.

B46 10 Once you have determined that the offense has
11 been established under the guidelines I have just given you,
12 then the crime of conspiracy is complete as to every person
13 found by you to be knowingly and willfully a member of the
14 conspiracy.

15 There are generally speaking two types of evi-
16 dence from which a jury may properly find the truth as to
17 the facts of a case. One is direct evidence such as the
18 testimony of an eyewitness. The other is indirect or cirsum-
19 stantial evidence, which is proof of a chain of circumstances
20 pointting to the existence or non-existence of certain facts.
21 Circumstantial evidence is the proof of facts from which
22 you may reasonably infer a material element of the crime.

23 Let us take a simple example to illustrate what
24 is meant by circumstantial evidence. We will assume that
25 when you entered the courthouse this morning the sun was

shining brightly outside, there was no rain, it was a clear day.

Now, assume that in the courtroom the blinds are drawn so you cannot look outside. Assume you are sitting here in this jury box and despite the fact that it was dry and clear when you entered the building, someone walks in with an umbrella dripping water, followed in a short time by a person wearing a raincoat which is wet. If you are asked whether it is raining out, you cannot say that you know it directly of your own observation but, certainly, upon the combination of facts which I have stated to you, even though when you entered the building it was not raining outside, it would be reasonable and logical for you to assume that it is raining now. That is about all there is to circumstantial evidence.

You may draw such inferences as reason and common sense lead you to draw from facts which you find to have been proven. Much greater care must be exercised when drawing inference from circumstances prove in a criminal case and mere suspicion will not warrant a conviction. However, no greater degree of certainty is required of circumstantial evidence than is required of direct evidence.

It is not on any different or lower plane than direct evidence. The law simply requires that in either

case you must be convinced beyond a reasonable doubt of the guilt of a defendant.

In determining guilt of innocence of a defendant you must decide that question solely from the evidence you have heard from the witness stand and the exhibits placed before you. The summations of counsel which you have heard are not to be considered as evidence but only as arguments to you as to what counsel feel you should find from the evidence.

In your search for the truth, you must use plain everyday common sense. You must not be governed by sympathy, bias or prejudice.

You have seen the witnesses on the stand and observed their manner of giving testimony. When I refer to witnesses I, of course, include the defendant Heimerle who has testified on this trial. How did the witness impress you? Did they appear to be testifying frankly, candidly and fairly?

In determining what degree of credit you should give a witness' testimony, you may consider his conduct, his manner of testifying and his interest in the outcome of the trial. You should also consider his relationship to the government or the defendants; his bias or impartiality and any motive he may have to testify falsely.

It does not necessarily follow, of course, that because a person is interested in the result he is incapable of telling a truthful version of an occurrence.

The defendant Heimerle has testified in this case. A defendant who wishes to testify is a competent witness and his testimony is to be judged in the same way as that of other witnesses.

If you believe that a witness willfully testified falsely as to any material fact you may disregard his testimony altogether, or you may accept that part of his testimony which you believe worthy of credence. What you accept or reject as credible testimony is for you to determine but you may not go outside the evidence to speculate as to facts.

The quality of the testimony of a particular witness regardless of who calls them rather than the quantity of witnesses is the test to be used in arriving at your decision. There is no presumption that the witnesses for the government are more or less truthful or credible than the witnesses for a defendant.

You have heard evidence of four previous conviction of the defendant Heimerle. I have already told you about how you may consider the offense involving counterfeit currency as going to the defendant's intent to commit the crimes. In addition, all the convictions may be considered

by you in assessing Heimerle's credibility as a witness and the weight you will give to his testimony.

You should consider a witness' entire testimony, his direct examination and cross-examination and his re-direct examination. You should consider the strength or weakness of his recollection in the light of all the testimony and the attendant circumstances in the case.

Inconsistencies or discrepancies in the testimony of a witness may or may not cause you to discredit such testimony. Two or more persons witnessing an incident or an occurrence or transaction may see or hear it differently. Innocent misrecollection, like failure of recollection, is not an unusual circumstance. In weighing the effect of a discrepancy consider whether it pertains to matters of importance or to an unimportant detail and whether the discrepancy results from innocent error or willful falsehood.

Some questions have been raised about the failure to call Julian Mitchell to testify in this trial. I point out to you that Julian Mitchell is not under the control of either the government or the defendants. Either side could have subpoenaed him to appear as a witness. Therefore, you are free to draw whatever inference you wish as to the failure of the government or Heimerle to call him or you need not draw any inference at all if you do not wish to.

2 However, there is no presumption against the
3 defendant from its failure to call a witness if it appears
4 to you that his testimony would be merely cumulative or
5 repretitious and of no greater value than the witnesses
6 who have testified.

7 You may call for any exhibits which you desire
8 to see in conjunction with your deliberations and you may
9 call for a reading of any portion of the official transcript
10 of the evidence, or any portion of this charge.

11 You are instructed that the question of possible
12 punishment of a defendant is the province of the Court and
13 is not the concern of the jury and should not in any sense
14 enter into or influence your deliberations. The duty of
15 imposing sentence in the event of conviction rests exclusive-
16 ly upon the Court. The function of the jury is to weigh
17 the evidence in the case and to determine the guilt or
18 innocence of a defendant solely upon the basis of such
19 evidence.

20 I have sought to avoid any comments which might
21 suggest that I have personal views on the evidence or that
22 I have any opinion as to the guilt or innocence of a defend-
23 ant. You are not to assume that I have any such views or
24 opinions. The charge is given to you solely to instruct
25 you as to the law applicable to this case.

The actions of a judge during trial in granting or denying motions or ruling on objections by counsel, or in statements to counsel, or in attempting clearly to set forth the law in these instructions, are not to be taken by you any indication of any determination of the issues of fact.

B47 These matters, the actions of the Court, relate to procedural matters and you, the members of the jury, determine the facts. There are 12 members of this jury and all of you must agree upon any verdict you reach as to a defendant on any of the counts in the indictment.

This case is obviously an important one to the defendants and it is equally important to the government. I am submitting it to you in complete confidence that you will comply with your oath as jurors and decide this case fairly and impartially without fear or favor.

If there are any exceptions to the charge I will take them in the robing room.

MR. POLLACK: Yes.

(The following took place in the robing room)

MR. POLLACK: I specifically except to that portion of the charge which states that Mitchell was equally available to both parties. I respectfully except for the record and state that Mitchell is under indictment and, if

called, most likely would take the Fifth Amendment.

THE COURT: We do not know that. It is up to you to produce him and have him tell the Court that is true.

MR. POLLACK: I state that only the government has the ability to grant him immunity and get his testimony before this jury.

THE COURT: The way the record stands he was available to you on subpoena. If he came and attempted to take the Fifth Amendment I would amend the charge of unavailability but you didn't call him to the stand to take the Fifth so I would have to give the unavailable charge to the jury. That is your task, not mine.

MR. POLLACK: That is all, your Honor.

MR. LOPEZ: No exceptions and no requests.

MR. NAFTALIS: Your Honor, the government has no exceptions.

(In open court.)

THE COURT: At this point I will excuse the alternates.

(Alternates excused.)

(Marshal sworn by the clerk.)

THE COURT: At this time I suggest that the jury be taken for lunch and then come back and start your deliberations.

(Luncheon recess taken from 12:50 until 2:00 p.m.)

(Jury returned to the courtroom at 4:00 p.m.)

THE COURT: Ladies and gentlemen of the jury, the Court has received two communications from you. One is we want Mr. McDonell's testimony read regarding Rosenberg bringing the money down to the car and what Rosenberg said.

Mr. Russell will read that.

(Testimony read.)

THE COURT: The jury requested some exhibits. They would like to have one of the \$100 bills that was pre-marked by Mr. Heavey, the Secret Service agent. Since that is a good bill that is being given to you, make sure we get it back.

Secondly, they want the pictures taken by the Secret Service agent. That is Exhibit 7.

(Exhibits handed to forelady.)

THE COURT: The jury may retire to continue deliberations.

(Jury left the courtroom at 4:05 p.m.)

MR. POLLACK: May I just make a motion?

Your Honor, my client asked me that there was a conversation in his presence implicating him by innuendo with the escape yesterday.

THE COURT: Who had the conversation in his

At Foley Sq. Trial

A convicted Queens bank robber, who escaped from outside a courtroom in the Federal Courthouse in Foley Square while waiting to testify in another trial late yesterday afternoon, was hunted today in a city-wide search by police, FBI and U.S. marshals.

Authorities said John S. Grillo, 29, of 35-18 206th St., Bayside, fled from a witness room on the 11th floor of the Centre Street building while marshals guarding him were in another room.

Grillo's red sports jacket was found in a first floor corridor by police, who began search immediately. The building was sealed, but the suspect apparently had already escaped.

Grillo, 5-8, with brown hair and brown eyes, has been a heavy drug user, according to police, who said he might be armed.

Grillo, they said, was sentenced to 10 years on multiple bank robbery charges in December 1972. He was paroled last November and re-arrested Jan. 31 after allegedly holding up a Queens bank. He pleaded guilty to bank

robbery and firearms charges and is currently awaiting sentencing in that case. As a parole violator, Grillo must finish his original sentence and faces up to 25 years in prison on the January heist.

Acting chief U.S. Marshal Edward Scheu said he had no explanation for the escape.

Grillo had been waiting to testify as a defense witness at a counterfeiting trial, but a federal judge subsequently disallowed his testimony. As marshals went into the witness room to return him to the federal jail behind the courthouse, they discovered he had fled.

House Panel Weighing Future of Revenue Sharing

WASHINGTON (AP) — Work on renewing revenue sharing began yesterday in the House Government Operations Committee.

The program, which began in 1972, will expire Dec. 31 unless renewed. The bill under consideration would continue it through Sept. 1, 1980, at an annual cost of about \$6.65 billion.

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Ways

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SKIMMER
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Pant Sets

\$18

Dresses

Your new-season wardrobe begins at MAYS with care-free polyester fashions at marvelous values.



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EMBROID

Enchanting set gowns of nylon satin with embroidered bodice in scalloped edge. Val lace. Color beige. Size

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FAMOUS
2-PC. NY
GOWN in
COAT SE

149

Exquisite sleep ensemble... swinging long coat sheer overlay edged with embroidered scalloped edge.

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"You didn't give her a kiss," Lewis Rudin, chairman of the Association for a Better New York, chided Mr.

R. Wagner, and an assortment of trade and civic leaders.

Charles Gillet, president of the New York Convention and Visitors Bureau, who

Metropolitan Briefs

Levittown School Board's Plan Upheld

A State Supreme Court justice ruled that the plans of the Levittown (L.I.) School District for a 10 percent staff reduction, the furloughing of teachers without pay, and a moratorium on all sabbatical leaves did not have to be submitted to binding arbitration. The justice, James F. Niehoff, said an arbitration provision in the teacher's contract was unenforceable because of the school district's financial plight.

Bank Robber Escapes From Court

A convicted bank robber who was waiting to testify in another trial escaped from the United States Court House at Foley Square. Federal marshals identified the missing man as 29-year-old John Grillo of 35-18 206th Street, Bayside, Queens. He apparently fled from outside an 11th-floor courtroom and escaped before marshals sealed the building and conducted a search. He had been awaiting sentencing for a bank robbery.

Landlord Fights Window-Guard Rule

A Brooklyn landlord challenged in State Supreme Court a New York City Department of Health regulation requiring the installation of window guards in apartments where children under 10 years old reside. The Department of Health was ordered by Justice Irving H. Saypol to show cause next Monday why the regulation challenged by the Sorbonne Apartments Company of 315 Ocean Parkway should not be set aside. The guards must be installed during a three-year period beginning Sept. 1.

Jersey Bus Strike Affects 40,000

A strike shut down two bus companies serving New Jersey's Passaic, Essex and Hudson Counties and carrying 40,000 commuters to and from New York City each workday. The two carriers, Inter City Bus Line and Northeast Coach Line, are operated by a subsidiary of Transport of New Jersey.

From the Police Blotter:

A dispute between two women led to the fatal stabbing of one of them on the front steps of a house at 17 West 102d Street. The victim, who was stabbed in the face, head, throat and chest, was identified as Rose Houston, 35 years old, of 830 Amsterdam Avenue. Her alleged attacker, identified as Evelyn Carroll, 36, of 68 Broadhurst Avenue, was charged with homicide. Two knives were recovered. . . . An off-duty police officer, Ernesto DeCotrau, sitting in his own parked car at 165th Street and the Grand Concourse, the Bronx, shortly before 1 A.M., was robbed at gunpoint by two men who took his revolver and fled in his car. The officer flagged down a radio patrol car, which pursued the pair to 169th Street, where they fled on foot. After an exchange of shots, in which no one was injured, the officers arrested Arthur Blake, 27, of 1360 Grand Avenue, and Roy Brown, 24, of 1372 Washington Avenue. Officer DeCotrau's revolver was recovered.

Helga Eilers with her husband
the 50th millionth visitor to

Jersey Environm Of Nuclear Plan

Continued From Page 1, Col. 3

"owe it to the public to analyze the risk of the worst possible accident."

While there have been analyses of the potential hazards from a failure of emergency cooling systems and a resultant core meltdown for land-based nuclear facilities, he said, no similar analyses have been made for offshore plants, scheduled by Public Service for opening in 1985.

"Responsible government knowingly accepts certain risks," Mr. Bardin said in a letter to Federal officials. "New Jersey has done so before with respect to nuclear power. We may well do so again. We cannot be expected to act in ignorance, however. New Jersey needs to know the full risk."

In his letter, he said that the state had been asking "for a candid weighing of risks, including maximum effects," for the last two years but that no action had been taken on that request.

He said that a core meltdown of a land-based plant—though unlikely—would lead to extreme heat, and the melting of metal, concrete, soil and rock beneath the core with a resultant radioactive contamination and the death of everything and everyone in the immediate area.

"What would be the effects of a similar failure in a floating nuclear power plant?" Mr. Bardin said. "What would be the effects of a nuclear fire spreading through the ocean water? Would the effects be worse than in the case of land-based plants? If so, how much worse? Would the effects be to humans be less than in the case of land-based plants? If so, how much less?"

NEWS BRIEFS

City Hospital Aides To Vote on Strike

The 18,000 members of District Council 37 of the Municipal Hospital Workers Union will take a strike vote at 6 p.m. today at the Hotel Diplomat, 43d St. and Sixth Ave.

Lillian Roberts, associate director of the union, said that, if passed, the vote would authorize a strike in all of the city's 18 municipal hospitals on May 24.

She issued the warning in a telegram to Dr. John L. S. Holloman Jr., president of the city's Health and Hospitals Corp., which runs the municipal hospitals.

Ms. Roberts said that the issues involve "cuts in services, layoffs, unnecessary suffering and death because of insufficient staff," among other things.

—Hugh Wyatt

Uphold Law on Big Mac Bonds

The city's Emergency Moratorium Act, under which short-term city notes could be transferred into long-term Municipal Assistance Corp. bonds, was upheld yesterday by the Appellate Division of State Supreme Court.

The Flushing National Bank of Queens, on behalf of the holders of \$1.6 billion in city notes, had challenged a ruling last Dec. 24 by Manhattan Supreme Court Justice Harold Baer in favor of the law.

The bank charged that holders of short-term notes would lose interest by switching to Big Mac bonds.

—Donald Flynn

Appointed the City's Culture Boss

H. Claude Shostal was named by Mayor Beame to the city's commissioner of cultural affairs at a salary of \$38,771. He currently is the director of the Mayor's Office of Lower Manhattan Development, at a salary of \$37,680, and will assume his new job June 1. Shostal, 36, will succeed Patrick B. McGee, acting commissioner of cultural affairs, who is planning to join a private cultural institution. The original head of cultural affairs, Irving Goldman, resigned after his indictment on charges involving his business dealings.

Window-Grate Rule Challenged

A Brooklyn landlord challenged yesterday a March 20 Board of Health regulation requiring window grates in all apartments in which children aged 10 or under reside.

The Sorbonne Apartment Co., which operates a 90-unit building at 815 Ocean Parkway, complained that the rule would impose an "onerous burden" on landlords required to install grates in the million-plus apartments in the city. The firm argued that the New York City Housing Authority would be the major violators.

Manhattan Supreme Court Justice Irving Saypol set a hearing for May 10.

—Donald Flynn

Convicted Robber Flees From Courthouse

Convicted bank robber John S. Grillo escaped from a witness room in the U.S. Courthouse in Foley Square yesterday just minutes before he was scheduled to testify in a counterfeiting trial.

The 29-year-old from Bayside, Queens, has a long criminal record, including two bank robbery convictions. He was to testify yesterday in the counterfeiting case of James Helms and Harold Rosenberg before Judge Charles M. Metzner. He was being held at the Metropolitan Corrections Center in order to testify.

The FBI has called in city police to help them with the search.

—Marilyn Kramer

Rikers Co Razor /

By FR

Two guards in the Rikers yesterday by a prisoner who hit while the inmate was cutting the guards, another prisoner cut out.

The slasher was identified as James Valentine, 28, who is awaiting trial on assault, burglary and drug charges. He was arrested in December in the theft of nearly \$2 million in jewels from the Park Ave. apartment of an investment banker.

Soon after he was sent to Rikers, he allegedly attacked two guards and was sent to Bellevue Hospital for mental tests. Last Thursday, according to the Correction Department, he attacked four more guards with fists and feet, inflicting such serious injuries that they required hospital treatment. Since then, Valentine has been confined in the mental observation section of the prison hospital.

Requested a Shower

Around 2:30 a.m. yesterday, he reportedly requested permission to take a shower. Officers Andrew James, 47, and Bernard Zeisel, 37, accompanied him to the shower room and waited until he had finished. As they were escorting him back to the mental observation area, he pulled a razor from his coveralls and slashed both guards, prison officials said.

James was cut in the face and Zeisel of the left ear and left side of his head. Other guards helped the bleeding officers overpower the berserk slasher and put him back in detention. Thirty stitches were needed to close James' wounds, while Zeisel required nine stitches.

After the battle to subdue Valentine, it was discovered that another prisoner, Angel Cruz, was missing from the motor pool. While the guards' attention was being diverted by the fracas in the hospital, Cruz had climbed atop or under the tanker of a gasoline truck and rode it out of the prison.

Officers Robert Polanco and Clarence Jackson found the department car, drove over the bridge linking the prison island to Queens and caught up with the truck at Broadway and Northern Blvd., Woodside.

The driver told them he was

Mob Gets a Charity Cover for

(Continued from page 5)

watching nearly 60,000 events a year, he admits he has no idea how widely abuses might have

been a reputation as Joe Bonanno's body guard at the notorious Apalachin, N.Y., meeting of Mafia leaders in 1957, is considered one of the mob's brainiest

or five nights a week at \$100 a night, exclusive of the busy side-bet profits at the craps tables.

Nobody Arrested

**NEW YORK
COURT OF APPEALS
FOR THE SECOND CIRCUIT**

**UNITED STATES OF AMERICA,
Appellee,**

- against -

**ROSENBERG & HEIMERLE.,
Appellants.**

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

I, Victor Ortega, being duly sworn,
depose and say that deponent is not a party to the action, is over 18 years of age and resides at
1027 Avenue St. John, Bronx, New York
That on the **19th** day of **August** 19 **76** at **One St. Andrews Plaza, New York**

deponent served the annexed *Appendix* upon
Robert B. Fiske Jr.

the **Attorney** in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the Attorney(s) herein.

Sworn to before me, this **19th**
day of **August** 19 **76**

Beth A. Hirsh
BETH A. HIRSH
Notary Public, State of New York
No. 41-4023156
Qualified in Queens County
Commission Expires March 30, 1978

Victor Ortega

VICTOR ORTEGA